

Notice of Allowability

Application No.

09/698,903

Applicant(s)

WESTON ET AL.

Examiner

Anne R. Kubelik

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☒ The allowed claim(s) is/are 24, 25, 30-32, 38, 43, 47 and 49.
3. ☒ The drawings filed on 27 October 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

1. The final rejection mailed 18 November 2004 is vacated.

Examiner's Amendment

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Anne-Marie Yvon on 15 November 2004.

IN THE CLAIMS:

Claims 44-46 and 48 are cancelled without prejudice.

Claim 24. (Currently amended) A method for determining the presence or absence of elite event MS-B2 in *Brassica* plant material, said method comprising performing a polymerase chain reaction (PCR) assay on a genomic DNA sample from ~~said~~ *Brassica* plant material, using an MS-B2 specific primer pair, wherein the first member of said primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 1-234 of SEQ ID NO:8, or the complement thereof, and wherein the second member of said primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 235-415 of SEQ ID NO:8, or the complement thereof;

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wherein ~~the use of~~ said MS-B2 specific primer pair, when used in said PCR assay on a genomic DNA sample from transgenic *Brassica* plant material comprising an MS-B2 specific region, produces a MS-B2 specific DNA fragment;

wherein ~~the use of~~ said MS-B2 specific primer pair, when used in said PCR assay on a genomic DNA sample from non-transgenic *Brassica* plant material not comprising an MS-B2 specific region, does not produce said MS-B2 specific DNA fragment;

wherein production of said MS-B2 specific DNA fragment in said PCR assay is indicative of the presence of elite event MS-B2 in said plant materials; and

wherein no production of said MS-B2 specific DNA fragment in said PCR assay is indicative of the absence of elite event MS-B2 in said plant material.

Claim 30. (Currently amended) A kit for determining the presence or absence of elite event MS-B2 in *Brassica* plant material, said kit comprising at least one MS-B2 specific primer pair selected from the group consisting of:

a) a first MS-B2 specific primer pair, wherein the first member of said first primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 1-234 of SEQ ID NO:8, or the complement thereof, and wherein the second member of said first primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 235-415 of SEQ ID NO:8, or the complement thereof; and

a) a second MS-B2 specific primer pair, wherein the first member of said second primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 194-416 of SEQ ID NO:10, or the complement thereof, and wherein the second member of said second

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primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 1-193 of SEQ ID NO:10, or the complement thereof; and

wherein ~~the use of~~ said MS-B2 specific primer pair, when used in said PCR assay on a genomic DNA sample from transgenic *Brassica* plant material comprising an MS-B2 specific region, produces a MS-B2 specific DNA fragment;

wherein ~~the use of~~ said MS-B2 specific primer pair, when used in said PCR assay on a genomic DNA sample from non-transgenic *Brassica* plant material not comprising an MS-B2 specific region, does not produce said MS-B2 specific DNA fragment;

wherein production of said MS-B2 specific DNA fragment in said PCR assay is indicative of the presence of elite event MS-B2 in said plant materials; and

wherein no production of said MS-B2 specific DNA fragment in said PCR assay is indicative of the absence of elite event MS-B2 in said plant material.

Claim 43. (Currently amended) A method for determining the presence or absence of elite event MS-B2 in *Brassica* plant material, said method comprising performing a polymerase chain reaction (PCR) assay on a genomic DNA sample from said *Brassica* plant material, using an MS-B2 specific primer pair, wherein the first member of said primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 194-416 of SEQ ID NO:10, or the complement thereof, and wherein the second member of said primer pair ~~comprising~~ comprises 21-23 consecutive nucleotides ~~selected from~~ of nucleotides 1-193 of SEQ ID NO:10, or the complement thereof;

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wherein ~~the use of~~ said MS-B2 specific primer pair, when used in said PCR assay on a genomic DNA sample from transgenic *Brassica* plant material comprising an MS-B2 specific region, produces a MS-B2 specific DNA fragment;

wherein ~~the use of~~ said MS-B2 specific primer pair, when used in said PCR assay on a genomic DNA sample from non-transgenic *Brassica* plant material not comprising an MS-B2 specific region, does not produce said MS-B2 specific DNA fragment;

wherein production of said MS-B2 specific DNA fragment in said PCR assay is indicative of the presence of elite event MS-B2 in said plant materials; and

wherein no production of said MS-B2 specific DNA fragment in said PCR assay is indicative of the absence of elite event MS-B2 in said plant material.

IN THE ABSTRACT:

This invention pertains to methods for determining the presence or absence in *Brassica* plant material of elite event MS-B2, which is transgenic *Brassica* plants, plant material and seeds, characterized by harboring a specific transformation event of, particularly by the presence of a construct comprising a male-sterility gene, at a specific location in the *Brassica* genome, using PCR and primers specific to the construct, and kits for use in the methods. ~~The *Brassica* plants of the invention combine the male-sterility phenotype with optimal agronomic performance, genetic stability and adaptability to different genetic backgrounds.~~

IN THE TITLE:

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MALE-STERILE BRASSICA PLANTS AND METHODS FOR PRODUCING SAME
METHODS FOR DETERMINING THE PRESENCE OR ABSENCE OF ELITE EVENT MS-
B2 IN BRASSICA PLANT MATERIAL

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

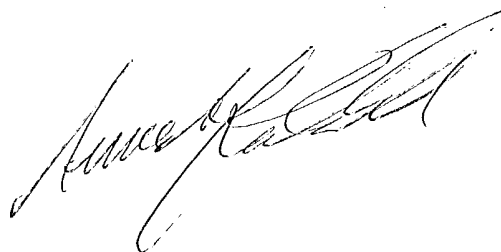
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Anne R. Kubelik, Ph.D.
December 29, 2004



ANNE KUBELIK
PATENT EXAMINER